



Elliott Investment Management L.P.  
40 West 57<sup>th</sup> Street  
New York, New York 10019

**Via Electronic Mail**

June 4, 2021

Vanessa A. Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re: Proposed Universal Proxy Rulemaking  
Release No. 34-91603  
File No. S7-24-16**

Dear Secretary Countryman:

Elliott Investment Management L.P. (“Elliott”) appreciates the opportunity to submit this letter in response to the Commission’s April 16, 2021 reopening of the comment period for its proposed universal proxy rule, which was originally published on November 10, 2016 (the “Proposed Rule”). Elliott supports the Commission’s renewed focus on the issue of universal proxies and commends the Commission for prioritizing the Proposed Rule on its agenda. We agree with key aspects of the Proposed Rule and believe that introducing a mandatory universal proxy card for contested elections of directors will enhance the proxy system to the benefit of companies, shareholders, and other market participants.

Our perspective on the Proposed Rule is informed by our work as an investor and an engaged shareholder in a variety of contexts. We are often called upon to vote in contested elections as a public company shareholder, and we also have experience as an active participant in corporate governance matters, including advocating for changes to boards of directors and other steps to enhance shareholder value. A number of our investment professionals have also served at various times as directors on public company boards and have seen these issues from the company’s perspective. Based on this range of perspectives, we respectfully offer several recommendations for the Commission’s consideration as we believe there are certain structural elements of the Proposed Rule that could unduly favor companies at the expense of shareholders.

Elliott is in favor of the Commission’s proposal to use mandatory universal proxies in contested elections of directors. Our proxy voting system is of vital importance to the capital markets as the primary means by which boards and management teams are accountable to shareholders. We believe the Proposed Rule would be a significant step forward to ensuring that shareholder elections continue to serve this important function. Allowing shareholders to vote for their preferred combination of duly nominated director candidates will help shareholders exercise the rights they have under state corporate law in the same manner as if they attended a shareholder meeting. Adopting a universal proxy system will also level the playing field in a proxy contest by requiring each party to present on the same proxy card all duly nominated director candidates, rather than on separate and competing proxies. We believe this system will

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be more efficient and will eliminate the key company advantage of requiring shareholders to adopt an “all or nothing” view of a slate of director candidates. A universal proxy system will give shareholders freedom of choice to vote for the director candidates who best align with the needs of the company at that time. If adopted, we believe a universal proxy system would likely stimulate greater engagement by shareholders with companies and directors as part of the proxy voting process. We believe this engagement will increase the quality of the proxy voting system and corporate governance more generally. In short, the Staff’s proposal is an enhancement of shareholder democracy.

Elliott also supports the Proposed Rule’s elimination of the short slate rule and revision to the consent required of a bona fide nominee. The introduction of a universal proxy system will alleviate many of the practical constraints historically associated with the short slate rule and bona fide nominee consent, such as the ad hoc vote splitting occasionally facilitated by proxy solicitors in contested elections. These amendments are a welcome update and recognize current governance and communications expectations and practices among proxy participants.

Elliott respectfully offers two recommendations for the Commission’s consideration to improve the Proposed Rule. First, the minimum solicitation threshold should be based on a majority of shareholder accounts entitled to be solicited, rather than a majority of voting power. Second, the timing and sequencing of nomination notification requirements should be structured so that the dissidents and the company would provide notice of their respective director nominees at the same time. We discuss each of these recommendations in further detail below.

***Minimum Solicitation Threshold.*** Elliott agrees that a minimum solicitation threshold will help prevent abuse of a universal proxy system, but believes the current solicitation threshold should be modified. The Commission has proposed mandating in new Rule 14a-19(a)(3) that dissidents solicit the holders of shares representing at least a majority of the voting power of shares entitled to vote on the election of directors. Elliott believes, however, that the minimum solicitation threshold based on a majority of the voting power, as proposed, would not accomplish the Commission’s stated purpose of requiring dissidents to undertake meaningful solicitation efforts in support of their nominees. The Commission’s economic analysis concluded that, on average, a small fraction of the total number of shareholder accounts outstanding would be required to satisfy the proposed solicitation threshold in a contested election. The Commission’s analysis estimated that dissidents would need to solicit no more than 10% of the total number of shareholder accounts of a company in order to meet the proposed solicitation requirement. The concentration of share ownership at many public companies would likely mean that dissidents would need to solicit only a small percentage of the number of shareholder accounts. In this regard, one recent article estimates that three asset managers represent approximately 25% of the votes cast at annual meetings held by S&P 500 companies.<sup>1</sup>

Given this concentration of voting power and in the absence of a broad-based solicitation requirement, dissidents could potentially ignore the substantial majority of investors, including retail investors who represent an estimated 91% of shareholder accounts according to the Commission’s economic analysis. An imbalanced solicitation would risk depriving retail shareholders of material information about dissident director nominees and the reasons for

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<sup>1</sup> See Lucian A. Bebchuk & Scott Hirst, *The Specter of the Giant Three*, 99 B.U. L. Rev. 721 (2019), available at <https://corpgov.law.harvard.edu/2019/05/21/the-specter-of-the-giant-three/>.

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their nomination. A system where the majority of shareholders may not have all the information about all the nominees for director would undercut an important purpose of the proxy system and deny large numbers of shareholders information needed to make informed voting decisions and actively participate in shareholder elections. This in turn would dampen the utility of a universal proxy system as a means to ensure that boards and managements are accountable to shareholders.

Elliott believes that a more appropriate solicitation threshold is at least a majority of the total number of shareholder accounts entitled to vote on director nominations at the meeting. We believe that such a solicitation threshold would best accomplish the goals of the Proposed Rule by ensuring that dissidents undertake truly meaningful solicitation efforts that reach a large swath of the shareholder base. We believe this solicitation requirement would deter potential frivolous abuse of the universal proxy process while also ensuring that director nominations, which are a matter of vital concern to all shareholders, are presented to a mix of institutional and retail shareholders.

A solicitation threshold based on a majority of shareholder accounts would increase retail shareholder participation in the voting process. Fundamental changes to a company's corporate governance, including contested changes to the membership of a board of directors, are best accomplished when there is a broad consensus for change among a company's shareholder base. A solicitation requirement based on a majority of shareholder accounts solicited, versus number of shares, would help ensure that a broad base of shareholders is able to express a fully informed view in a contested election. It should also not present additional measurement challenges or be more burdensome than the proposed threshold based on a majority of voting power.

***Exchange of Director Nominee Information.*** Elliott believes that the Commission's proposed timing and sequencing of the exchange of director nominee information could provide a significant structural advantage to companies, and proposes that imposing the same timing obligations on dissidents and companies would better support the goals of a universal proxy system.

Under the Proposed Rule, a dissident would be required to deliver to the issuer the list of its director nominees no later than 60 days before the meeting date, but the company would not have to provide its list of directors to the dissident until 50 days before the meeting. This would always allow the company to finalize its proxy statement first and would structurally prevent a dissident from being able to print and mail its proxy materials until the earlier of the company filing a proxy statement with the Commission or providing notice, up to 10 days after the dissident's notice. Elliott believes that this structural advantage for companies should be removed in the final rule.

Specifically, Elliott recommends that Rule 14a-19 should require a company to provide notice of its own director nominees at the same time that a dissident would be required to provide the notice required by Rule 14a-19, *i.e.*, no later than 60 days before the meeting date. In addition to eliminating a facial unfairness, aligning the director nominee notification requirements would reduce the potential for gamesmanship. It also would encourage a more effective dialogue between shareholders and companies. As currently drafted, the proposed notice deadlines could inadvertently foreclose such engagement, especially given that, as proposed, the notice requirements may not be waived.

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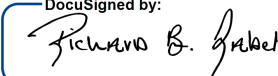
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Elliott thanks the Commission for providing the renewed opportunity to provide these recommendations on the Proposed Rule. We support the adoption of the Proposed Rule with the enhancements proposed herein and believe adding a universal proxy rule will significantly enhance the proxy system.

We would welcome the opportunity to discuss our comments and recommendations with the Commission or the Commission staff. Thank you for your consideration.

Sincerely,

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Richard B. Zabel  
**General Counsel & Chief Legal Officer**  
**Elliott Investment Management**  
40 West 57th Street, New York, NY 10019  
Direct: +1 (212) 478 1850  
Main: +1 (212) 974 6000